



EUROPEAN COURT OF HUMAN RIGHTS
COUR EUROPÉENNE DES DROITS DE L'HOMME

Communicated on 15 July 2014

FIRST SECTION

Application no. 20991/12
Galina Anatolyevna NOVIKOVA
against Russia
lodged on 17 March 2012

STATEMENT OF FACTS

The applicant, Ms Galina Anatolyevna Novikova, is a Russian national, who was born in 1964 and lives in Novozybkov, the Bryansk Region.

The facts of the case, as submitted by the applicant, may be summarised as follows.

A. The applicant's medical treatment

On an unspecified date in November 2005 the applicant applied to the municipal health care institution “Novozybkovsky roddom” (“Novozybkovsky Maternity Hospital”) for a medical examination. She complained about vaginal bleeding and itching. On the basis of the results of medical tests the applicant was diagnosed with trichomoniasis and was recommended to undergo curettage of the uterine cavity.

On 22 November 2005 the applicant underwent curettage of the uterine cavity in the Novozybkovsky Maternity Hospital. On the same date the applicant gave her written consent to the intervention. In particular, she stated that she had been informed of the possible risks of becoming infertile and agreed that the doctors would act according to their judgment in case of unforeseen developments in the course of the intervention. After the intervention the applicant left the hospital. No drugs or additional tests were prescribed by her doctor.

A week later the applicant returned to the hospital as the bleeding did not stop. Dr M. prescribed the applicant certain drugs for the treatment of trichomoniasis. Two weeks later the applicant went to see Dr M. as the bleeding continued. However, according to the applicant, Dr M. could not tell what was wrong with her and did not recommend her any medical treatment either.

As the bleeding continued, on 16 December 2005 the applicant went to see a district doctor, Dr A. The latter diagnosed the applicant with metritis and hematometra and referred her to the hospital.

On 21 December 2005 the applicant was again admitted to the Novozybkovsky Maternity Hospital. Dr B. diagnosed her with chronic metritis, hystero-myoma, hematometra and recommended biopsy of the lining of the uterus. She also recommended curettage of the uterine cavity with a view to remove the hematometra and make a more accurate diagnosis. On the same date the applicant again underwent curettage of the uterine cavity. She gave her written consent to the intervention and stated that she had been informed of the possible risks, including the risk of becoming infertile. After the intervention she was diagnosed with submucous hystero-myoma and prescribed antiphlogistic therapy, hemostatics and preventive anaemia treatment.

On 28 December 2005 the applicant was discharged from the hospital. According to her, the bleeding continued.

After that she remained unwell and on 2 January 2006 reapplied to the Novozybkovsky Maternity Hospital with heavy bleeding. She was examined by a doctor on duty, Dr P., and admitted to the hospital for further medical treatment. Within the next three days the applicant's condition rapidly declined. As in view of the hystero-myoma's form it was not possible to remove it and leave the uterus intact, the applicant was recommended to undergo the removal of the uterus. On 5 January 2006 the applicant gave her written informed consent to the surgery and stated that she had been informed of the possible risks, including the risk of becoming infertile. On the same date supracervical hysterectomy was performed on the applicant and, as a consequence, her uterus was removed.

B. The applicant's attempts to institute criminal proceedings

On 3 June 2009 healthcare authorities carried out an inspection of the Novozybkovsky Maternity Hospital in relation to the treatment provided to the applicant in 2005-2006. As a result, the following breaches of the requirements applicable to medical institutions were found: (i) breach of the rules of storage of medical documents; (ii) failure to provide the applicant with advice on subsequent treatment following her discharge from the hospital; and (iii) breach of the rules on prescription of medicines.

On an unspecified date in July 2009 the applicant requested the Novozybkov and Novozybkovsky District Department of the Interior ("Novozybkovsky OVD") to investigate the events related to the alleged medical negligence of the hospital's staff with regard to her treatment, which led to the removal of her uterus.

On 22 July 2009 the Novozybkovsky OVD refused to institute criminal proceedings having found no evidence of a crime.

It appears that the applicant complained about the refusal.

On 4 August 2009 the Novozybkovsky OVD again refused to institute criminal proceedings having found no evidence of a crime.

The applicant subsequently filed three more requests to institute criminal proceedings. She added new arguments in each request.

On 14 and 29 October and 18 November 2009 the Novozybkovsky OVD rejected the applicant's requests, having found no evidence of a crime.

The applicant resubmitted her requests to have criminal proceedings instituted.

On 4 December 2009 the Novozybkovsky OVD again refused to institute criminal proceedings having found no evidence of a crime. However, at the same time it asked the prosecutor to remit the case for additional investigation. The decision also mentioned that the applicant's medical file had been requested from the Novozybkovsky Maternity Hospital and that upon its receipt it would be handed over to the Regional Forensic Bureau for expert examination.

On 4 and 25 February 2010 the Novozybkovsky OVD, following an additional inquiry, rejected the applicant's request and again asked the prosecutor to remit the case for additional investigation as a report of the medical expert examination in this case had not been received. Both decisions stated that on 7 December 2009 and 28 January 2010 requests for an expert examination were sent to the Regional Forensic Bureau accompanied by the applicant's medical file received from the Novozybkovsky Maternity Hospital.

In March 2010 an expert examination was conducted by the Commission of the Bryansk Regional Healthcare Department. On 2 March 2010 the applicant refused to undergo a physical examination. It appears that the Commission then proceeded with the examination of the applicant's medical file. According to the Commission's report no. 1 DZh-766 of 4 March 2010, the doctors acted lawfully when providing the applicant with medical assistance.

On 19 May 2010 the Novozybkovsky OVD again refused to institute criminal proceedings. Having regard to report no. 1 DZh-766 of 4 March 2010 of the Commission of the Bryansk Regional Healthcare Department and to the fact that the applicant had been informed about all the risks and consequences of the interventions, the Novozybkovsky OVD concluded that there was no evidence of a crime.

On unspecified date in 2010 the applicant sought opinion of an independent expert, A., who was provided with her medical file. According to expert A.'s opinion no. 148-3 of 16 September 2010, the curettage of the uterine cavity was unduly performed on 22 November 2005, which led to the damaging and thinning of the front wall of the uterus. Besides, whereas the applicant was diagnosed with trichomoniasis, its treatment was only prescribed a week later. Such a delay constituted a defect of treatment. As regards the hysteromyoma the applicant was diagnosed with, this diagnosis was not confirmed either by ultrasonic scanning or histological tests, as the medical file did not contain the results of the latter. Therefore, the removal of the uterus was likely to have been performed on the basis of the inaccurate diagnosis with a view to conceal the defects of the curettage of the uterine cavity performed on 22 November 2005. Expert A. concluded that there had been no medical grounds for the removal of the uterus and that, therefore, medical harm had been caused to the applicant.

On 20, 24 and 28 September 2010 the applicant resubmitted her requests to institute criminal proceedings. She attached opinion no. 148-3.

On 30 September 2010 and on 9 November 2010 the Novozybkovsky OVD refused to institute criminal proceedings having found no evidence of

a crime. The decisions noted that expert A. was not qualified to act as a forensic expert and that, therefore, his opinion had no legal value.

On 24 December 2010 the Novozybkovsky Interdistrict Department of the Investigative Committee instituted criminal proceedings into the applicant's allegations of inadequate medical assistance.

On 3 March 2011 this decision was quashed by a higher prosecutor.

On 29 March 2011 the Novozybkovsky OVD refused to institute criminal proceedings. The decision noted that currently civil proceedings for defamation instituted by the Novozybkovsky Maternity Hospital against the applicant were pending. In the course of the proceedings a forensic examination had been carried out by the Smolensk Regional Forensic Expert Bureau. According to the examination report of 22 October 2010 there had been no breaches of the applicable rules and standards by the staff of the Novozybkovsky Maternity Hospital when providing the applicant with medical assistance.

On 12 April 2011 the Novozybkovsky Interdistrict Prosecutor's Office quashed this decision and remitted the case for additional check.

On 20 April 2011, 31 May 2011 and 8 July 2011 the Novozybkovsky OVD again refused to institute criminal proceedings for lack of evidence of a crime. The decisions also referred to the forensic examination of 22 October 2010 by the Smolensk Regional Forensic Expert Bureau, carried out within the framework of the civil proceedings brought by the Novozybkovsky Maternity Hospital against the applicant.

On 27 June 2011 the Novozybkovsky Interdistrict Prosecutor's Office quashed the decision of 31 May 2011 and ordered to carry out a forensic medical examination.

On 13 August 2012 the Novozybkovsky Interdistrict Prosecutor's Office also quashed the decision of 8 July 2011 and ordered to carry out a forensic medical examination. The case was remitted for additional check to the Novozybkovsky OVD.

It is not clear whether the forensic medical examination was carried out.

C. Court proceedings

1. The first appeal against the refusal to institute criminal proceedings

On 15 November 2010 the applicant contested before a court all previously issued refusals of the Novozybkovsky OVD to institute criminal proceedings into her allegations of medical negligence.

By a decision of 6 December 2010 the Novozybkovsk Town Court dismissed the applicant's complaint.

On 21 January 2011 the Bryansk Regional Court quashed this decision and transmitted the case for a fresh examination to the Novozybkovsk Town Court.

On 11 February 2011 the Novozybkovsk Town Court decided to terminate the proceedings on the applicant's complaint as by the decision of 24 December 2010 the Novozybkovsky Interdistrict Department of the Investigative Committee had instituted the criminal proceedings.

2. The second appeal against the refusal to institute criminal proceedings

On unspecified date the applicant appealed to the Novozybkovsk Town Court against the Prosecutor's decision of 3 March 2011 to quash the decision to institute criminal proceedings.

On 6 April 2011 the Novozybkovsk Town Court dismissed the applicant's complaint.

On 20 May 2011 the Bryansk Regional Court upheld the decision of 6 April 2011 on appeal.

3. The third appeal against the refusal to institute criminal proceedings

On an unspecified date the applicant appealed to the Novozybkovsk Town Court against the Novozybkovsky OVD's of 29 March 2011.

On 18 April 2011 the Novozybkovsk Town Court dismissed the applicant's complaint.

On 27 May 2011 the Bryansk Regional Court quashed the decision on appeal and remitted the case for a fresh examination. It stated that the first instance court failed to examine whether the procedural decisions were delivered in due time. The outcome of the proceedings is not clear.

4. The fourth appeal against the refusal to institute criminal proceedings

The applicant again lodged a complaint to the Novozybkovsk Town Court contesting the decision of the Novozybkovsky Interdistrict Prosecutor's Office of 27 June 2011. She argued that a new forensic examination was unnecessary as an independent expert examination had already been carried out in this case.

On 21 September 2011 the Novozybkovsk Town Court dismissed the complaint. The court found that the opinion of expert A. could not be accepted by the court as he did not qualify as an "expert" within the meaning of the Code of Criminal Procedure. The court also noted that the applicant's medical file had been sent for examination to the Russian Forensic Centre in Moscow.

The applicant appealed against this decision.

On 28 October 2011 the Bryansk Regional Court upheld the decision on appeal.

5. The complaint contesting the breach of statutory time-limits

The applicant complained to the Novozybkovsk Town Court about the breach of statutory time-limits for investigation in relation to the decisions of the Novozybkovsky OVD of 31 May 2011 and the Novozybkovsky Interdistrict Prosecutor's Office of 26 July 2011.

On 2 March 2012 the Novozybkovsk Town Court dismissed the complaint, having found that the investigating authorities had acted lawfully.

6. *The fifth appeal against the refusal to institute criminal proceedings and the complaint contesting the breach of statutory time-limits*

On unspecified date the applicant lodged a complaint about the way in which her requests for investigation had been handled by the investigating authorities and also about the breach of certain procedural time-limits for investigation.

On 5 February 2013 the Novozybkovsk Town Court granted the applicant's complaints in the part related to the breach of procedural time-limits in the case. It dismissed the remainder of the complaint.

On 26 March 2013 the Bryansk Regional Court upheld the decision on appeal.

On 18 June 2013 the Bryansk Regional Court rejected the applicant's cassation appeal.

COMPLAINTS

The applicant complains about the failure to properly investigate her allegations of medical negligence. She relies on Articles 6 and 13 of the Convention.

QUESTIONS TO THE PARTIES

1. Has the forensic medical examination ordered by the decisions of the Novozybkovsky Interdistrict Prosecutor's Office of 27 June 2011 and 13 August 2012 been carried out? The Government are requested to submit copies of all the relevant documents.

2. What is the progress of the investigation into the applicant's allegations of medical negligence after the decision of the Novozybkovsky Interdistrict Prosecutor's Office of 13 August 2012? The Government are requested to submit copies of all the relevant documents.

3. Having regard to the procedural protection from inhuman or degrading treatment (see paragraph 131 of *Labita v. Italy* [GC], no. 26772/95, ECHR 2000-IV), was the investigation in the present case by the domestic authorities in breach of Article 3 of the Convention?

4. Did the doctors of the Novozybkovsky Maternity Hospital in their capacity of public officials provide the applicant with the best possible care according to the applicable standards of medical care and the current level of development of medical science? If not, has there been a breach of Article 3 of the Convention?